

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



KENNETH NEWKIRK,

Plaintiff,

v.

DIRECTOR, DEPT. OF
CORRECTIONS,

Defendant.

Civil Action No. 3:17CV785–HEH

MEMORANDUM OPINION
(Dismissing Without Prejudice 42 U.S.C. § 1983 Action)

Kenneth Newkirk, a Virginia inmate proceeding *pro se*, submitted this action and requested leave to proceed *in forma pauperis*. The pertinent statute provides:

In no event shall a prisoner bring a civil action [*in forma pauperis*] . . . if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.


28 U.S.C. § 1915(g).

Newkirk has at least three prior actions or appeals that have been dismissed as frivolous or for failure to state a claim. *See, e.g., Newkirk v. Shaw*, No. 3:14CV426–HEH, 2014 WL 4161991, at *3 (E.D. Va. Aug. 19, 2014); *Newkirk v. Circuit Court*, No. 3:14CV372–HEH, 2014 WL 4072212, at *3 (E.D. Va. Aug. 14, 2014); *Newkirk v. Lerner*, No. 3:13CV364–HEH, 2014 WL 587174, at *2–5 (E.D. Va. Feb. 14, 2014); *Newkirk v. Chappell*, No. 3:13CV73–HEH, 2013 WL 5467232, at *3 (E.D. Va. Sept. 30,

2013). Newkirk's current Complaint does not demonstrate that he is in imminent danger of serious physical harm. Accordingly, the Court will deny Newkirk's request to proceed *in forma pauperis*. The Court will dismiss the action without prejudice to Newkirk's refiling of the action accompanied by the full \$400.00 filing fee.

An appropriate Order will accompany this Memorandum Opinion.

Date: Feb 23, 2018
Richmond, Virginia

 /s/_____
HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE